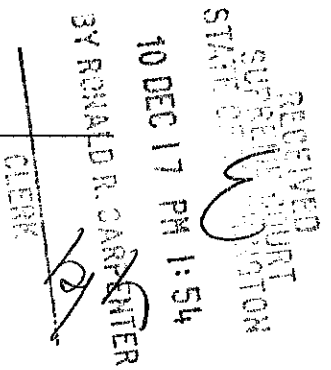
NO. 84223-0

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

DANIEL SNAPP, APPELLANT



Appeal from the Superior Court of Pierce County
The Honorable Katherine Stolz

No. 06-1-05153-1

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether there are two separate and distinct tests for a warrantless search of a vehicle incident to arrest?

2. Whether when an officer is searching for evidence of the crime of arrest, that officer should be entitled to do so based on any crime for which the officer has probable cause to arrest?

B. STATEMENT OF THE CASE.

1. Procedure

On October 31, 2006, based on an incident that occurred on July 22, 2006, the State Charged Daniel Snapp with twenty-two (22) counts of identity theft in the in the second degree. CP 1-9.

The defense filed a motion to suppress statements and evidence under CrR 3.5 and 3.6. As to the motion to suppress evidence the defense argued that the State lacked a legitimate basis to stop the vehicle; the validity of the search incident to arrest where the defendant was out of his car and handcuffed at the time of the search; that the stop was pretextual; and that the search was not validly based on officer safety. CP 13-31. The trial court denied the suppression motion. CP 73-76.

The defendant entered an ***Alford/Newton*** plea to an Amended Information of six counts of identity theft in the second degree. CP 41-43.

On the plea agreement the prosecutor' recommendation indicated that Snapp could appeal the court's suppression ruling. CP 43-53. On November 16, 2007 the court sentenced the defendant to total 25 months Drug Offender Sentencing Alternative Sentence. CP 57-70.

The defendant timely filed a notice of appeal on January 3, 2008. CP 77. The court of appeals affirmed the conviction in an opinion that was published in part. This court granted discretionary review.

2. Facts

The court entered the following findings of fact and conclusions of law as to the suppression hearing. *See* CP 73-76. A copy is attached as Appendix A for the court's convenience.

C. ARGUMENT.

1. WARRANTLESS SEARCHES OF A VEHICLE CAN BE BASED ON TWO DIFFERENT EXCEPTIONS TO THE WARRANT REQUIREMENT THAT ARE SEPARATE AND DISTINCT AND THE SHOULD NOT BE CONFLATED.

Washington adopted its constitution and became a State in 1889. However, an event far more significant for this case occurred a year earlier, when Karl Friedrich Benz began to sell what is considered to be

the first true automobile with an internal combustion engine. See http://en.wikipedia.org/wiki/Automobile#History; http://www.loc.gov/rr/scitech/mysteries/auto.html

What appears to have been the first automobile in Washington State passed through Tacoma and Seattle in 1900. *See* http://www.historylink.org/index.cfm?DisplayPage=output.cfm&file_id=957. That vehicle was a novelty and Washington didn't adopt its first traffic code until 1905, more than fifteen years after the adoption of the Constitution. http://www.historylink.org/index.cfm?DisplayPage=output.cfm&file_id=5718

These facts are not included as a quaint addition to lighten the opening of this argument. Rather, they are essential to a proper understanding of the jurisprudential issues in this case. That is because today the automobile is so omnipresent and commonplace that it is taken for granted as a part of our society and has an almost indescribably significant role in criminal law. However, the automobile did not exist at the time Washington adopted its constitution, including Article I, sec 7. It is not possible to properly understand the legal issues in this case unless that fact is kept in mind.

a. The History Of Search Of A Vehicle Incident To Arrest.

Under both the Washington and United States Constitutions a warrant is ordinarily required before officers may conduct a search of a person or place. ***State v. Smith***, 165 Wn.2d 511, 517, 199 P.3d 386 (2009). However, there are a significant number of narrowly drawn exceptions to the requirement of a warrant. *See* ***Smith***, 165 Wn.2d at 511.

To properly understand the issue raised by the appellant, it is necessary to review the history of federal law on the subject of how the Fourth Amendment applies to vehicles.

The Fourth Amendment provides that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

United States Constitution, Fourth Amendment.

One term after the U.S. Supreme Court issued its opinion in ***Terry v. Ohio***, it issued its opinion in ***Chimel v. California***, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969). In ***Chimel***, the court held that incident to the arrest of a suspect, the Fourth Amendment permitted police officers to conduct a warrantless search of the area under a suspect's immediate

control into which a suspect might reach to either grab a weapon or to conceal or destroy evidence. ***Chimel***, 395 U.S. at 763-766.

The court in ***Chimel*** noted that its holding was:

> Entirely consistent with the recognized principle that, assuming the existence of probable cause, automobiles and other vehicles may be searched without warrants "where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

Chimel, 395 U.S. at 764, n. 9 (quoting ***Carroll v. United States***, 267 U.S. 132, 153, 45 S. Ct. 280, 69 L. Ed. 543 (1925)) and citing ***Brinegar v. United States***, 338 U.S. 160, 69 S. Ct. 1302, 93 L. Ed. 1879 (1949).

In ***New York v. Belton***, the court held that where a police officer has made a lawful custodial arrest of the occupant of a vehicle, the officer may undertake a search of the passenger compartment without violating the Fourth Amendment as a contemporaneous incident of arrest. See, ***Thornton v. United States***, 541 U.S 651, 617, 124 S. Ct. 2127, 158 L. Ed. 2d 905 (2004) (citing ***New York v. Belton***, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981)).

In ***Thornton v. United States***, the court interpreted ***Belton*** broadly and held that where an arrestee is a recent occupant of a vehicle, officers may search the vehicle incident to the arrest. ***Thornton***, 541 U.S. at 623-24. The court based this standard in part on "[t]he need for a clear rule, readily understood by police officers and not depending upon differing

estimates of what items were or were not within reach of an arrestee at any particular moment..." ***Thornton***, 541 U.S. at 622-23.

However, significantly in ***Thornton***, Justice Scalia issued a concurring opinion in which he argued that the court's opinion in ***Thornton*** stretched the doctrine of search incident to arrest beyond the breaking point. ***Thornton***, 541 U.S. at 625 (Scalia concurring). In his concurrence, Justice Scalia argued that where in practice the vehicles are not searched until after arrestees are detained in handcuffs and placed in the back of a patrol car, there is no meaningful risk of the arrestee accessing the passenger compartment of the vehicle to obtain a weapon (or destroy evidence). ***Thornton***, 541 U.S. at 625-28 (Scalia dissenting). Justice Scalia instead argued that the search incident to arrest should be more correctly justified based upon a general interest in gathering evidence relevant to the crime for which the suspect had been arrested. ***Thornton***, 541 U.S. at 629 (Scalia dissenting).

Of particular relevance here is that the majority in Thornton rejected the argument Justice Scalia made in his concurrence. Accordingly, where the appellant here urges the court to adopt the same position, his doing so is directly contrary to the majority's express holding in ***Thornton***. *See* Br. App. p. 16 (stating, "Police had no reason to believe that evidence relevant to the crime of arrest might be found in Gibson's

car and the search plainly did not serve the government's interest in gathering evidence relevant to the crime of arrest.").

Moreover, where the appellant argues that this court should hold the search unlawful were it served neither of the underlying reasons for a search incident to arrest, that argument is directly contrary to the Supreme Court's holding in ***Robinson***, where the court expressly stated that the courts do not look to see whether the purposes of search incident to arrest are served. *See* Br. App. p. 14; ***Robinson***, 414 U.S. at 235 (holding that the courts do not look to whether the search supported one of the underlying reasons of officer safety or preservation of evidence).

Further, in ***Knowles*** the court emphasized that, "[T]he danger to the police officer flows from the fact of the arrest, and its attendant proximity, stress, and uncertainty, and not from the grounds for arrest." ***Knowles v. Iowa***, 525 U.S. 113, 116, 119 S. Ct. 484, 142 L. Ed. 2d 492 (1998) (quoting ***United States v. Robinson***, 414 U.S. 218, 234, n. 5, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973)). To the extent the appellant argues that the fact that Gibson was arrested on a warrant for an unknown charge means that there could be no basis for the officer to have a safety concern; that argument would be contrary to the Supreme Court's holding in ***Knowles***.

Ultimately, in ***Thornton***, the United States Supreme Court held that where a person was a recent occupant in immediate control of the car at the time of arrest, the officer is entitled to conduct a search incident to arrest.

In 2009 the United States Supreme Court issued its opinion in ***Arizona v. Gant***, --- U.S. ---, 29 S. Ct. 1710, 173 L. Ed. 2d 485 (2009) which significantly limited what had widely been considered to be the established law with regard to the ability of officers to conduct a warrantless search of a vehicle incident to the arrest of an occupant. The ***Gant*** opinion did two things. First it limited the ability to conduct search of a vehicle incident to arrest under the emergency exceptions for officer safety or to prevent the destruction of evidence where the occupant of the vehicle was handcuffed and locked in the back of a patrol car. Second, it added what it referred to as a new exception to the warrant requirement that permitted officers to search the vehicle for evidence of the crime of arrest. The standard adopted by the Supreme Court in ***Gant*** was more restrictive of vehicle searches than the Washington Supreme Court had been under Article I, section 7.

The Washington Supreme Court first considered the affect of ***Gant*** on Washington law in ***State v. Patton***, 167 Wn.2d 379, 219 P.3d 651 (2009). Rather than following *stare decisis* and accepting that the Fourth Amendment provided greater protection that article I, section 7, the Washington Supreme court undertook an independent analysis of the

search of a vehicle incident to the arrest of an occupant under Article I, section 7 in light of ***Gant***. The court in ***Patton*** then abandoned what had been the established precedent in Washington and returned to the standard set forth in an earlier Washington case, ***State v. Ringer***, 100 Wn.2d 686, 674 P.2d 1240 (1984).

In ***Ringer***, the court stated the following:

> Based on our understanding of Const. art. 1, § 7, we conclude that, when a lawful arrest is made, the arresting officer may search the person arrested and the area within his immediate control. *See* ***State v. Michaels***, *supra*. A warrantless search in this situation is permissible only to remove any weapons the arrestee might seek to use in order to resist arrest or effect an escape and to avoid destruction of evidence by the arrestee of the crime for which he or she is arrested.

This language was picked up in ***Patton*** and its progeny.

> Today we hold that the search of a vehicle incident to the arrest of a recent occupant is unlawful absent a reasonable basis to believe that the arrestee poses a safety risk or that the vehicle contains evidence of the crime of arrest that could be concealed or destroyed, and that these concerns exist at the time of the search.

Patton, 167 Wn.2d at 395. *See also* ***State v. Buelna Valdez***, 167 Wn.2d 761, 779, 224 P.3d 751 (2009) ("There was no showing that a delay to obtain a warrant would have endangered officers or resulted in evidence related to the crime of arrest being concealed or destroyed."); ***State v. Afana***, 169 Wn.2d 169, 177, 233 P.3d 879 (2010).

Unfortunately, much of the analysis in ***Ringer*** is flawed where its use of many of the earlier cases is not accurate. Rather than review all those problems here, it is sufficient to refer to Justice Durham's concurring split opinion in ***State v. Stroud***, which gives an accurate review of how the court in ***Ringer*** misapplied many of the cases it relied upon and thereby adopted a flawed legal analysis. *See* ***State v. Stroud***, 106 Wn.2d 144, 155-59, 720 P.2d 436 (1986) (Durham, J. concurring in the result). Not discussed by Justice Durham, (because the issue was not properly before the court) but particularly relevant in this case is the fact that court in ***Ringer*** conflates the exception permitting a warrantless search incident to arrest for evidence of the crime of arrest with the exigent circumstance exceptions to the warrant requirement to protect officer safety and prevent the destruction of evidence.

The issue in this case is the direct result of that erroneous conflation of the two exceptions in ***Ringer***. The result of that conflation is that the language from Ringer improperly imposes a higher and improper standard on the ***State*** than exists under either exception alone.

b. Exigent Circumstances Is A Separate Exception To The Warrant Requirement From Search of A Vehicle Incident To Arrest

It has long been established that a warrantless search may be conducted where there are exigent circumstances. ***Smith***, 165 Wn.2d at 517; ***State v. Cardenas***, 146 Wn.2d 400, 405, 47 P.3d 127, 57 P.3d 1156

(2002); ***State v. Wolfe***, 5 Wn. App. 153, 156, 486 P.2d 1143 (1971). *See also* ***State v. Young***, 76 Wn.2d 212, 214, 455 P.2d 595 (1969) (holding that officers who had a warrant, but failed to comply with service requirement were justified by exigent circumstances). Some such circumstances include when the officers have a good faith belief that they or someone else is at risk of bodily harm, when the person to be arrested is fleeing, or attempting to destroy evidence. ***Ker v. State of Cal.*** 347 U.S. 23, 39-40, 83 S. Ct. 1623, 10 L. Ed. 2d 726 (1963); ***Miller v. U.S.*** 357 U.S. 301, 307, 78 S. Ct. 1190, 2 L. Ed. 2d 1332 (1958). In Washington, the court allowed a warrantless search incident to arrest based on exigent circumstances in ***State v. Baker***, 4 Wn. App. 121, 125, 480 P.2d 778 (1971) (relying on ***Chimel*** for the position that a warrantless search incident to arrest was valid based on the exigent circumstances of risk of flight or destruction of evidence). Noteworthy is that the concern for destruction of evidence was not expressly limited to the crime of arrest, much like the language of the current version of the rule under ***Gant***. *See, e.g.*, ***State v. Campbell***, 15 Wn. App. 98, 547 P.2d 295 (1976) (where no one had been arrested, the court held that search of apartment to investigate recent burglary, which search led to the discovery of marijuana plants, was valid given the exigent circumstances of the burglary).

Thus, the purpose behind exigent circumstances exception applies to the reasonable risk of destruction of evidence of any crime, and is not limited to evidence of the crime of arrest, as is evidenced by the several

cases referenced where the was no arrest at all at the time of the search. Moreover, the reasoning behind exigent circumstances applies equally to the destruction of evidence by third parties who are not under arrest. *See e.g.*, ***Young***, 76 Wn.2d at 214ff (officers serving search warrant failed to comply with service requirements where once they announced the heard screaming, yelling, and the sound of occupants scurrying and running throughout house so that officers entered within seconds, resulting in a race for the bathroom with everyone ending up there). *See also* H. Matthew Munson, *State v. Parker: Searching The Belongings Of Nonarrested Vehicle Passengers During A Search Incident To Arrest*. 75 Wash. L. Rev. 1299 (2000).

For example, if the officer has arrested the driver of a vehicle for driving on a suspended license and locked that driver in the back of a patrol car, but upon return to the vehicle observes an unarrested passenger attempting to destroy evidence that the driver possessed narcotics, exigent circumstances would entitle the officer to seize the narcotics evidence to prevent its destruction even though the passenger was not at that point under arrest.

Compare this example to the facts in ***State v. Huckaby***, 15 Wn. App. 280, 549 P.2d 35 (1976). In ***Huckaby***, officers entered the residence with permission in order to conduct a marijuana transaction and to arrest the defendant for an earlier transaction. ***Huckaby***, 15 Wn. App. at 282. After the defendant was under arrest the defendant's wife stood next to an

open pantry in the kitchen and appeared to have her hand in a sack. ***Huckaby***, 15 Wn. App. at 282. Officers told her to keep her hands out of the sack, and one got up and looked into the pantry for weapons and observed what appeared to be bag of marijuana stems and a bag of marijuana seeds. ***Huckaby***, 15 Wn. App. at 282. Later, the bags were removed to a table by another officer looking for additional suspects. ***Huckaby***, 15 Wn. App. at 282. A warrant was obtained based solely on the odor of marijuana. ***Huckaby***, 15 Wn. App. at 283. While the case was decided on the basis of the validity of the entry of the officers and the arrest, the evidence was all admitted at trial with the court holding that the seizure as a result of the arrest was proper. ***Huckaby***, 15 Wn. App. 291.

This point is even further highlighted in the case of weapons. Any time an officer contacting a vehicle has a reasonable concern for officer safety, regardless of whether that concern is caused by an arrestee or someone else, the officer is entitled to check the occupants for weapons without a search warrant. ***State v. Acrey***, 148 Wn.2d 738, 753, 64 P.3d 594 (2003).

The point being made here is a crucial one. Exigent circumstances provide their own justification for a warrantless search, regardless of whether or not the person is under arrest. The only reason exigent circumstances have been tied to a search incident to arrest is because often at the point of arrest exigent circumstances arise. For the sake of a bright line rule, the court in ***Belton*** was viewed as having interpreted that

connection broadly in favor of the officers. After ***Gant***, and in light of modern police practices, that connection is now viewed more narrowly. However, the essential point is that exigent circumstances do not depend on arrest. This is also why exigent circumstances are often equated with the emergency exception, and not search incident to arrest. *See* ***State v. Smith***, 165 Wn.2d 511, 519, 199 P.3d 386 (2009) (discussing ***State v. Smith***, 137 Wn. App. 262, 269, 153 P.3d 199 (2007); ***Hocker v. Woody***, 95 Wn.2d 822, 631 P.2d 372 (1981) (discussing "hot pursuit" as an emergency exception). *See also* ***State v. Steinbrunn***, 54 Wn. App. 506, 509, 774 P.2d 55 (1989) (discussing the progressive diminution of blood alcohol level over time as an "emergency"); ***State v. Patterson***, 112 Wn.2d 731, 736, 774 P.2d 10 (1989) (quoting ***State v. Smith***, 88 Wn.2d 127, 135, 559 P.2d 970 (1977)).

Understanding that the jurisprudential basis of exigent circumstances operate independently of search incident to arrest makes it possible to understand the State's second point. That is that the traditional exception for a search incident to arrest for evidence of the crime of arrest is a separate and distinct exception from the exigent circumstance of preventing the destruction of evidence.

c. The Search of a Vehicle Incident To Arrest Is Its Own Exception To The Warrant Requirement.

In United States v. Robinson, the court recognized that the general exception for search incident to arrest has historically been formulated into two distinct propositions. ***United States v. Robinson***, 414 U.S. 218, 224, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973). First, the search of a person by virtue of lawful arrest. ***Robinson***, 414 U.S. at 224. Second, search of the area within control of the arrestee. ***Robinson***, 414 U.S. at 224. The first is a search incident to arrest for evidence of the crime of arrest. The second is a search based upon exigent circumstances. Morever, the dissent in Robinson also distinguishes between a warrantless search of the person incident to arrest and a warrantless search based upon exigent circumstances. *See also* ***United States v. Robinson***, 414 U.S. 218, 242-43, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973) (Marshall Dissenting).

One of the early cases from this state gives a particularly clear explanation of why a search incident to arrest for evidence of the crime of arrest differs from a search based upon exigent circumstances.

> It has always been held that a peace officer, when he makes a lawful arrest, may lawfully, without a search warrant, search the person arrested and take from him any evidence tending to prove the crime with which he is charged. If a search may be made of the person or clothing of a person lawfully arrested, then it would follow that a search may also be properly made of his grip or suit case, which he may be carrying. From this it seems to us to follow logically that a similar search, under the same circumstances, may be made of the automobile of which he has possession and control at the time of his arrest. This is true because the

> person arrested has the immediate physical possession, not only of the grips or suit cases which he is carrying, but also of the automobile which he is driving and of which he has control.

State v. Hughlett, 124 Wash. 366, 214 P. 841 (1923) *overruled by* ***Ringer,*** 100 Wn.2d at 669. While ***Hughlett*** was overruled by ***Ringer***, it was on a different ground. The holding of the court in ***Ringer*** was that officers may search the area within the arrestee's immediate control. ***Ringer***, 100 Wn.2d at 699. However, as indicated above, ***Ringer*** mistakenly conflates search incident with arrest with exigent circumstances.

The basis articulated in ***Hughlett*** has a very long history in the common law. *See* ***Thornton***, 541 U.S. at 629-30 (Justice Scalia concurring) (citing to ***United States v. Wilson***, 163 F. 338, 340, 343 (C.C.S.D.N.Y. 1908); ***Smith v. Jerome***, 47 Misc. 22, 23-24, 93 N.Y.S. 202, 202-03 (Sup.Ct.1905); ***Thornton v. State***, 117 Wis. 338, 346-47, 93 N.W. 1107, 1110 (1903); ***Ex Parte Hurn***, 92 Ala. 102, 112, 9 So. 515, 519-20 (1891); ***Thatcher v. Weeks***, 79 Me. 547, 548-49, 11 A. 599, 599-600 (1887); 1 F. Wharton Criminal Procedure § 97, pp. 136-137 (J. Kerr 10th ed.1918); 1 J. Bishop, Criminal Procedure § 211, p. 127 (2d ed. 1872)); cf. ***Spalding v Preston***, 21 Vt. 9, 15, 1848 WL 1924 (1848); ***Queen v. Frost***, 9 Car. & P. 129, 131-134 (1839); ***King v. Kinsey***, 7 Car. & P. 447 (1836); ***King v. O'Donnell***, 7 Car. & P. 138 (1835); ***King v. Barnett***, 3 Car. & P. 600, 601 (1829).

As Justice Scalia noted in is concurrence, "The articulation in ***Bishop*** in 1872 is typical:

> The officer who arrests a man on a criminal charge should consider the nature of the charge; and if he finds about the prisoner's person, or otherwise in his possession, either goods or moneys which there is reason to believe are connected with the supposed crime as its fruits, or as the instruments with which it was committed, or as directly furnishing evidence relating to the transaction, he may take the same, and hold them to be disposed of as the court may direct."

Thornton, 541 U.S. at 630 (Justice Scalia concurring) (quoting ***Bishop***, §211 at 127).

A search incident to arrest for evidence of the crime of arrest is a separate exception from the exigent circumstances exception.

d. The Language From ***Ringer*** is *Dicta*

Moreover, it should be noted that the language in ***Ringer*** that conflates the two exceptions is *dicta* because the exception for evidence of the crime of arrest was not at issue in ***Ringer*** where Ringer was arrested on a warrant. Because he was arrested on a warrant, there was no basis to search him for evidence of the crime of arrest. Similarly, all of this court's post-***Gant*** cases to date that have relied upon the ***Ringer*** language, including ***Patton***, ***Buelna Valdez***, ***Afana***, and ***Adams*** involved arrests based on a warrant. Accordingly, the use of the language from ***Ringer*** in all those cases is dicta as well because the issue was never properly before the court in any of those cases. ***Patton***, 167 Wn.2d 379; ***Buelna Valdez***,

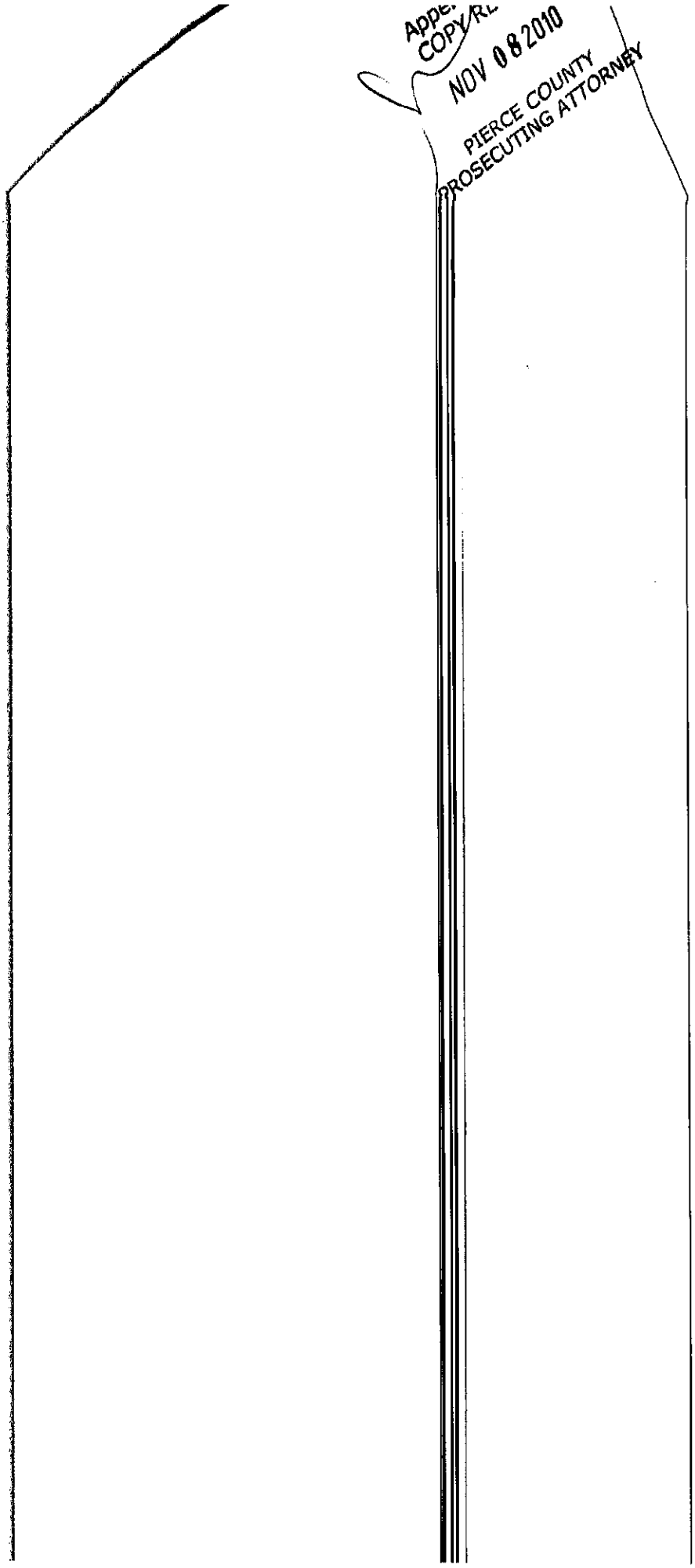
167 Wn.2d 761; ***Afana***, 169 Wn.2d 169; ***State v. Adams***, 169 Wn.2d 487, 238 P.3d 459 (2010).

Here, the court should hold that the search was a valid search incident to arrest for evidence of the crime of arrest where the officer observed a baggie of suspected methamphetamine in the glove box, Snapp appeared to be under the influence of a stimulant, Snapp admitted he had a meth pipe and was arrested for drug paraphernalia as well as on the warrant and for a suspended license. *See* CP 73-76.

2. THE "CRIME OF ARREST" SHOULD BE ANY CRIME FOR WHICH OFFICERS HAVE PROBABLE CAUSE TO ARREST THE DEFENDANT AT THE TIME THE SEARCH IS CONDUCTED.

One ambiguity that has come up in light of the court's post ***Gant*** cases is what constitutes the crime of arrest. In Washington, for there to be a lawful arrest, the officer must 1) have probable cause; and 2) an actual custodial arrest so that an ordinary person would not feel free to leave. *See* ***State v. O'Neill***, 148 Wn.2d 564, 585, 62 P.3d 489 (2003); ***State v. Griffith***, 61 Wn. App. 35, 41, 808 P.2d 1171 (1991). Nothing in that requires the officer to advise the arrestee of what they are arrested for.

Often as an arrest or investigation proceeds, an officer will develop probable cause to support a new crime. Since officers have no obligation to advise arrestees what they are under arrest for, the crime of arrest for which the officer is entitled to search should include any and all crimes that the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officer has probable cause to believe were committed by the arrestee at the time the officer conducts the search.

D. CONCLUSION.

For the foregoing reasons this court should adopt language for a search incident to arrest that recognizes that exigent circumstances is a separate exception from a search for evidence of the crime of arrest. The conviction should be affirmed as a search for evidence of the crime of arrest.

DATED: December 17, 2010

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Pierce County
Prosecuting Attorney

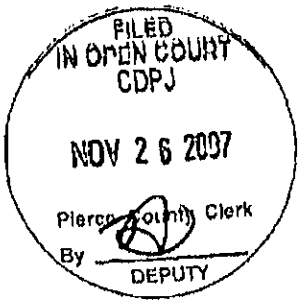
STEPHEN TRINEN
Deputy Prosecuting Attorney
WSB # 30925

Certificate of Service:
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

12/17/10 [signature]
Date Signature

APPENDIX "A"

Findings of Fact and Conclusions of Law



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. DANIEL GERALD SNAPP, Defendant.	CAUSE NO. 06-1-05153-1 FINDINGS AND CONCLUSIONS ON ADMISSIBILITY OF EVIDENCE CrR 3.6

THIS MATTER having come on before the Honorable Katherine M. Stolz on the 3rd day of October, 2007, and the court having rendered an oral ruling thereon, the court herewith makes the following Findings and Conclusions as required by CrR 3.6.

THE UNDISPUTED FACTS

1) On 7/22/06 Trooper Pigott observed a blue Ford Escort license 528 TVT being driven by the defendant with a female passenger. The trooper observed that two air fresheners were hanging from the rear view mirror. It was the trooper's opinion that the air fresheners were blocking the driver's view.

2) The trooper then noted that the seat belt/shoulder harness on the driver's side was "patched" together with a blue aluminum carbineer. It was the trooper's opinion that the carbineer was insufficient and that the equipment (seat harness) was defective.

3) The trooper activated his emergency lights and signaled the defendant's vehicle to stop.

4) The defendant turned into the parking lot of the Silver Dollar Casino and stopped.

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5) The trooper observed the defendant lean forward and dip his right shoulder, as if he was placing an item under the seat, as he turned into the Casino parking lot. The trooper called for back up.

6) The trooper contacted the defendant and informed him of the reason for the stop. The trooper asked the defendant what he hid as he pulled into the lot. The defendant replied that he was reaching for a cigarette. The trooper asked for identification, registration and proof of insurance. The defendant identified himself as DANIEL GERALD SNAPP with a DOC inmate card. The defendant stated that he did not have a license. The defendant hastily opened and closed the glove box as he retrieved the vehicle registration. While the glove box was open the trooper noticed a baggie of suspected methamphetamine inside.

7) The trooper observed that SNAPP appeared to be under the influence of a stimulant, possibly methamphetamine. The trooper asked if the defendant had any weapons. SNAPP produced a knife from his pocket. The trooper asked SNAPP if would exit the car and perform some physical tests. SNAPP agreed to the tests and performed the tests.

8) A second trooper arrived and the female, identified as Angela Wilcox, was placed in the second patrol vehicle.

9) The trooper asked SNAPP if there was "meth" in the glove box. SNAPP denied that there was meth in the car, but stated that there was a meth pipe.

10) The trooper cuffed SNAPP and placed him in his patrol vehicle.

11) The trooper contacted the female, Wilcox, and asked her what was in the car. Wilcox stated that there was some marijuana in her purse and that SNAPP had hidden a meth pipe.

12) The trooper ran a records check. SNAPP had a no bail arrest warrant for Escape from DOC. SNAPP's driver's license was revoked in the first degree. SNAPP was advised that he was under

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arrest on the warrant, drug paraphernalia, and DWLS 1. SNAPP was advised of his rights. Wilcox was arrested for possession of marijuana.

13) The trooper then searched the vehicle incident to the arrest. The trooper found in the passenger compartment a blue accordion file containing items of identity theft: names, bank account numbers, addresses, dates of birth, social security cards, blank checks, and ID cards. In a black zippered folder the trooper found several ID cards, social security cards, and an enlarged copy of SNAPP's Washington identification card. In SNAPP's wallet the trooper located two credit cards, one in the name of Brandy Oman and a second in the name of Aimee Dryden.

14) The trooper noted that the back seat of the car folded down. The trooper folded the seat down and observed in the trunk area a large number of items. The trooper stopped his search and had the car impounded. Later, a search warrant was obtained for the items in the rear of the car.

THE DISPUTED FACTS

1) The defense claims that the officer did not have probable cause to stop the vehicle for obstructed vision or defective equipment.
2) The defense claims that the search incident to arrest cannot be justified and that it exceeded the scope when the trooper looked into the blue accordion file and the zippered file.

FINDINGS AS TO DISPUTED FACTS

1) The court finds that the trooper's description of the blue aluminum carbineer was creditable.
2) The court finds that the trooper had probable cause to stop the defendant's vehicle for either an infraction or a warning.

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3) The court finds that the trooper had probable cause to arrest on the DOC Escape warrant, DWLS 1, and the drug paraphernalia.

4) The court finds that the trooper could properly search the passenger compartment of the vehicle incident to the arrest.

5) The court finds that the trooper could search any unlocked containers found in the passenger compartment..

REASONS FOR ADMISSIBILITY OR INADMISSIBILITY OF THE EVIDENCE

1) The court finds that the trooper had probable cause to stop the defendant's vehicle and that the subsequent arrest was valid.

2) The search of the vehicle followed a valid arrest and did not exceed the permitted scope.

3) The court finds the evidence found during the search to be admissable at trial.

DONE IN OPEN COURT this 26th day of November, 2007.

JUDGE
KATHERINE M. STOLZ

Presented by:

Tom L. Moore
Deputy Prosecuting Attorney
WSB # 17542

Approved as to Form:

Harry S. Steinmetz
Attorney for Defendant
WSB #

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